

REMARKS

On July 21, 2004, the undersigned had a telephone interview with Examiner Sherr. During the course of the interview, it was determined that the Patent Office files do not contain any of the three information disclosure statements that have been previously submitted in this application, and does not contain the Associate power of attorney granting authorization to the undersigned. Accordingly, copies of those documents are submitted herewith. Copies of the U.S. patents are being omitted since this is a duplicate submission. The undersigned appreciates the Examiner's willingness to discuss this case and appreciates that the Examiner wishes to discuss the matter further after seeing the present response. The undersigned looks forward to advancing this case by such further discussions.

During the course of the above interview, claim 1 and it's relevance to the Downs reference were discussed. It was pointed out by the undersigned that it is unclear how the Downs reference is being applied to the claims of the present application, and the purpose of the call was to clarify how the reference is being applied. Although no resolution of that issue was obtained during that interview, a discussion of Downs and its relevance to claim 1 was carried out. That discussion is summarized in the following table. The right column first deals with the passage of Downs that was cited by the Examiner, and follows with a speculative discussion about possible intent of the Examiner in citing Downs in italics:

CLAIM 1	Example location in Downs (col. 2, line 40-55, i.e., the summary)
A method of facilitating a transaction for downloadable digital data over an electronic network, the method comprising:	"A method and apparatus for securely providing data to a user's system" - Not clear that the disclosure is either relevant or irrelevant

maintaining a presence on the electronic network to which a consumer may connect;	closest identifiable element in cited passage is a "clearing house" used in a decryption key exchange process. <i>The content provider might be viewed as a presence, but does not appear in the cited passage.</i>
transmitting a page from the presence to the consumer over the electronic network, the page including information concerning the downloadable digital data; (emphasis added)	No identifiable disclosure in the cited passage. <i>The interface that the user sees having information about the downloadable data is at the player application 195 of the end user device - thus there is no apparent reason why a page would be transmitted</i>
receiving a command from the consumer over the electronic network indicating that the consumer wishes the transaction for the downloadable digital data;	No identifiable disclosure in the cited passage. <i>User likely requests a download, but it is not clear that the user does so within the constraints of the claim.</i>
transmitting format options from the presence to the consumer over the electronic network via the page , the format options being selectable by the consumer (emphasis added)	No identifiable disclosure in the cited passage.
and including at least one of	
(i) types of software on which the downloadable digital data may be executed;	No identifiable disclosure in the cited passage
(ii) types of portable devices on which the downloadable digital data may be stored;	No identifiable disclosure in the cited passage
(iii) types of compression formats in which the downloadable digital data may be configured;	No identifiable disclosure in the cited passage. <i>Compression formats discussed in connection with Fig. 13, but the formats are selected from database 160 that resides at the content provider</i>

(iv) types of CODECs through which the downloadable digital data may be processed; and	No identifiable disclosure in the cited passage
(v) types of digital rights management algorithms to which the downloadable digital data may be subject	No identifiable disclosure in the cited passage

The above analysis was done in preparation for the above interview and is believed to summarize the thrust of the interview while clearly demonstrating that the Office Action does not established that claim 1 is anticipated by the Downs reference¹. It is noted that While the Examiner requested that the undersigned point out the patentable features of the invention, the burden of establishing unpatentability falls upon the Examiner. A very similar analysis could be done on each of the other independent claims with similar outcome. Accordingly, none of the independent claims are anticipated and it thus follows that none of the dependent claims can be anticipated. It is therefore believed clear that all claims should be allowed at an early date.

In the event the same reference is used to reject the current claims, the undersigned reiterates that a more detailed explanation of the application is necessary in order to understand the application of the quite lengthy Downs reference.

The undersigned additionally notes that many other distinctions exist between the cited reference and the invention as claimed. However, in view of the clear deficiencies pointed out above, further discussion of these deficiencies is believed to be unnecessary at this time; failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position.


In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date.

¹The CAFC has stated that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." (Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983))(Emphasis added).

REQUEST FOR INTERVIEW:

As arranged in the prior interview mentioned above, the undersigned will appreciate the opportunity to further discuss this case with Examiner Sherr after she has had an opportunity to review the present response, unless such interview is obviated by a notice of allowability.

Respectfully submitted,



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